

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

KELVIN THOMAS,
*on behalf of himself and others
similarly situated,*

Plaintiff,

v.

Civil Action No. 3:13-cv-029

BACKGROUNDCHECKS.COM,
**(in its own name and trading as
e-backgroundchecks.com)**

Defendant.

MOTION TO APPROVE AMENDED CLASS NOTICES

The Plaintiff, Kelvin Thomas, on behalf of himself and others similarly situated, and with the consent of the Defendant, moves for approval of the amended Class Notices in this action.

UPDATED BACKGROUND AND REVISIONS

The Court has preliminarily approved the class settlement. Dkt No. 85. The Parties were directed to simplify and revise the class notice and related documents and resubmit it to the Court.

One of the Court's items of concern in the class notice and settlement structure was the exclusive reliance on Internet communication for class members to exercise certain rights such as submission of a claim or requesting the copies of a consumer file disclosure, both important components of the consideration in the case. The revision of this distribution structure required the creation of a new secure method to receive requests for the class member disclosures, verify identities and send the personal files. The Parties have now created such a secure process.

While the notice simplification effort was in process, Defendant incurred greater difficulty than expected at generating a complete class list. The Parties' counsel have communicated back and forth with regard to these difficulties, which as of today have been resolved.

The Parties have also simplified the claims process in accordance with the Court's advice and response. To recover a monetary claim, class members will need to attest that they were the subject of an incomplete or otherwise inaccurate background check. The first tier of claims, a Stated Claim, requires only this attestation. The second tier of claim at which a larger payment is to be made, a Substantiated Claim, requires the class member to provide information and detail regarding the inaccuracy and violative report.

The revised documents are attached as follows:

1. Revised Settlement Agreement.
2. Revised Mail Notice.
3. Revised Long Form Notice.
4. Revised Claim Form.
5. Revised Limited Claim Exclusion Form.

REVISED PRELIMINARY APPROVAL ORDER AND NEW DATES

Plaintiff submits a revised Proposed Preliminary Approval Order. The primary change from the original proposed Order is the revision of the opt out, objection and claim deadline dates to accommodate the later mailing of the class notices. As proposed in the revised proposed Order, the deadlines for exclusions and objections are now closer to the scheduled Final Fairness Hearing date, July 29, 2015. The result is that the Parties will now have a shorter window to incorporate the objections and opt-out data into the final papers, a burden they are of course willing and able to meet.

However, though the Parties and necessary third parties have required substantial time to get these documents revised and corrected, the result is a narrow window for revised approval by the Court if they are to provide approved notices to the Settlement Administrator in time for a June 1, 2015 mail date. The Parties recognize the burden this places on the Court and regret that they were unable to avoid it without a slight delay in the Fairness Hearing date. They ask the Court for an opportunity to be heard by telephone conference at the Court's first available date and time in the event further explanation or argument is necessary before approval.

Respectfully Submitted,

KELVIN THOMAS

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CERTIFICATE OF SERVICE

I hereby certify that on 12th day of May 2015, I filed a true and correct copy of the foregoing on the Court's CM/ECF System, which will send a notice of electronic filing to all counsel of record, including:

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